

107TH CONGRESS  
1ST SESSION

# S. 952

To provide collective bargaining rights for public safety officers employed  
by States or their political subdivisions.

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## IN THE SENATE OF THE UNITED STATES

MAY 24, 2001

Mr. GREGG (for himself, Mr. KENNEDY, Mr. DEWINE, and Mr. BAYH) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To provide collective bargaining rights for public safety  
officers employed by States or their political subdivisions.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Public Safety Em-  
5       ployer-Employee Cooperation Act of 2001”.

6       **SEC. 2. DECLARATION OF PURPOSE AND POLICY.**

7       The Congress declares that the following is the policy  
8       of the United States:

9               (1) Labor-management relationships and part-  
10       nerships are based on trust, mutual respect, open

1 communication, bilateral consensual problem solving,  
2 and shared accountability. Labor-management co-  
3 operation fully utilizes the strengths of both parties  
4 to best serve the interests of the public, operating as  
5 a team, to carry out the public safety mission in a  
6 quality work environment. In many public safety  
7 agencies it is the union that provides the institu-  
8 tional stability as elected leaders and appointees  
9 come and go.

10 (2) The Federal Government needs to encour-  
11 age conciliation, mediation, and voluntary arbitra-  
12 tion to aid and encourage employers and their em-  
13 ployees to reach and maintain agreements con-  
14 cerning rates of pay, hours, and working conditions,  
15 and to make all reasonable efforts through negotia-  
16 tions to settle their differences by mutual agreement  
17 reached through collective bargaining or by such  
18 methods as may be provided for in any applicable  
19 agreement for the settlement of disputes.

20 (3) The absence of adequate cooperation be-  
21 tween public safety employers and employees has im-  
22 plications for the security of employees and can af-  
23 fect interstate and intrastate commerce. The lack of  
24 such labor-management cooperation can detrimen-  
25 tally impact the upgrading of police and fire services

1 of local communities, the health and well-being of  
2 public safety officers, and the morale of the fire and  
3 police departments. Additionally, these factors could  
4 have significant commercial repercussions. Moreover,  
5 providing minimal standards for collective bar-  
6 gaining negotiations in the public safety sector can  
7 prevent industrial strife between labor and manage-  
8 ment that interferes with the normal flow of com-  
9 merce.

10 **SEC. 3. DEFINITIONS.**

11 In this Act:

12 (1) **AUTHORITY.**—The term “Authority” means  
13 the Federal Labor Relations Authority.

14 (2) **EMERGENCY MEDICAL SERVICES PER-**  
15 **SONNEL.**—The term “emergency medical services  
16 personnel” means an individual who provides out-of-  
17 hospital emergency medical care, including an emer-  
18 gency medical technician, paramedic, or first re-  
19 sponder.

20 (3) **EMPLOYER; PUBLIC SAFETY AGENCY.**—The  
21 terms “employer” and “public safety agency” mean  
22 any State, political subdivision of a State, the Dis-  
23 trict of Columbia, or any territory or possession of  
24 the United States that employs public safety offi-  
25 cers.

1           (4) FIREFIGHTER.—The term “firefighter” has  
2           the meaning given the term “employee engaged in  
3           fire protection activities” in section 3(y) of the Fair  
4           Labor Standards Act (29 U.S.C. 203(y)).

5           (5) LABOR ORGANIZATION.—The term “labor  
6           organization” means an organization composed in  
7           whole or in part of employees, in which employees  
8           participate, and which represents such employees be-  
9           fore public safety agencies concerning grievances,  
10          conditions of employment and related matters.

11          (6) LAW ENFORCEMENT OFFICER.—The term  
12          “law enforcement officer” has the meaning given  
13          such term in section 1204(5) of the Omnibus Crime  
14          Control and Safe Streets Act of 1968 (42 U.S.C.  
15          3796b(5)).

16          (7) MANAGEMENT EMPLOYEE.—The term  
17          “management employee” has the meaning given  
18          such term under applicable State law in effect on  
19          the date of enactment of this Act. If no such State  
20          law is in effect, the term means an individual em-  
21          ployed by a public safety employer in a position that  
22          requires or authorizes the individual to formulate,  
23          determine, or influence the policies of the employer.

24          (8) PUBLIC SAFETY OFFICER.—The term “pub-  
25          lic safety officer”—

1           (A) means an employee of a public safety  
2           agency who is a law enforcement officer, a fire-  
3           fighter, or an emergency medical services per-  
4           sonnel;

5           (B) includes an individual who is tempo-  
6           rarily transferred to a supervisory or manage-  
7           ment position; and

8           (C) does not include a permanent super-  
9           visory or management employee.

10          (9) SUBSTANTIALLY PROVIDES.—The term  
11          “substantially provides” means compliance with the  
12          essential requirements of this Act, specifically, the  
13          right to form and join a labor organization, the right  
14          to bargain over wages, hours, and conditions of em-  
15          ployment, the right to sign an enforceable contract,  
16          and availability of some form of mechanism to break  
17          an impasse, such as arbitration, mediation, or fact  
18          finding.

19          (10) SUPERVISORY EMPLOYEE.—The term “su-  
20          pervisory employee” has the meaning given such  
21          term under applicable State law in effect on the date  
22          of enactment of this Act. If no such State law is in  
23          effect, the term means an individual, employed by a  
24          public safety employer, who—

(A) has the authority in the interest of the employer to hire, direct, assign, promote, reward, transfer, furlough, lay off, recall, suspend, discipline, or remove public safety officers, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment; and

(B) devotes a majority of time at work exercising such authority.

**SEC. 4. DETERMINATION OF RIGHTS AND RESPONSIBILITIES.**

(a) DETERMINATION.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Authority shall make a determination as to whether a State substantially provides for the rights and responsibilities described in subsection (b).

(2) SUBSEQUENT DETERMINATIONS.—

(A) IN GENERAL.—A determination made pursuant to paragraph (1) shall remain in effect unless and until the Authority issues a subsequent determination, in accordance with the procedures set forth in subparagraph (B).

1 (B) PROCEDURES FOR SUBSEQUENT DE-  
2 TERMINATIONS.—Upon establishing that a ma-  
3 terial change in State law or its interpretation  
4 has occurred, an employer or a labor organiza-  
5 tion may submit a written request for a subse-  
6 quent determination. If satisfied that a material  
7 change in State law or its interpretation has oc-  
8 curred, the Director shall issue a subsequent  
9 determination not later than 30 days after re-  
10 ceipt of such request.

11 (3) JUDICIAL REVIEW.—Any State, political  
12 subdivision of a State, or person aggrieved by a de-  
13 termination of the Authority under this section may,  
14 during the 60 day period beginning on the date on  
15 which the determination was made, petition any  
16 United States Court of Appeals in the circuit in  
17 which the person resides or transacts business or in  
18 the District of Columbia circuit, for judicial review.  
19 In any judicial review of a determination by the Au-  
20 thority, the procedures contained in subsections (c)  
21 and (d) of section 7123 of title 5, United States  
22 Code, shall be followed, except that any final deter-  
23 mination of the Authority with respect to questions  
24 of fact or law shall be found to be conclusive unless

1 the court determines that the Authority's decision  
2 was arbitrary and capricious.

3 (b) RIGHTS AND RESPONSIBILITIES.—In making a  
4 determination described in subsection (a), the Authority  
5 shall consider whether State law provides rights and re-  
6 sponsibilities comparable to or greater than the following:

7 (1) Granting public safety officers the right to  
8 form and join a labor organization, which may ex-  
9 clude management and supervisory employees, that  
10 is, or seeks to be, recognized as the exclusive bar-  
11 gaining representative of such employees.

12 (2) Requiring public safety employers to recog-  
13 nize the employees' labor organization (freely chosen  
14 by a majority of the employees), to agree to bargain  
15 with the labor organization, and to commit any  
16 agreements to writing in a contract or memorandum  
17 of understanding.

18 (3) Permitting bargaining over hours, wages,  
19 and terms and conditions of employment.

20 (4) Requiring an interest impasse resolution  
21 mechanism, such as fact-finding, mediation, arbitra-  
22 tion or comparable procedures.

23 (5) Requiring enforcement through State courts  
24 of—



1 (A) all rights, responsibilities, and protec-  
 2 tions provided by State law and enumerated in  
 3 this section; and

4 (B) any written contract or memorandum  
 5 of understanding.

6 (c) FAILURE TO MEET REQUIREMENTS.—If the Au-  
 7 thority determines, acting pursuant to its authority under  
 8 subsection (a), that a State does not substantially provide  
 9 for the rights and responsibilities described in subsection  
 10 (b), such State shall be subject to the regulations and pro-  
 11 cedures described in section 5.

12 **SEC. 5. ROLE OF FEDERAL LABOR RELATIONS AUTHORITY.**

13 (a) IN GENERAL.—Not later than 1 year after the  
 14 date of enactment of this Act, the Authority shall issue  
 15 regulations in accordance with the rights and responsibil-  
 16 ities described in section 4(b) establishing collective bar-  
 17 gaining procedures for public safety employers and officers  
 18 in States which the Authority has determined, acting pur-  
 19 suant to its authority under section 4(a), do not substan-  
 20 tially provide for such rights and responsibilities.

21 (b) ROLE OF THE FEDERAL LABOR RELATIONS AU-  
 22 THORITY.—The Authority, to the extent provided in this  
 23 Act and in accordance with regulations prescribed by the  
 24 Authority, shall—

1           (1) determine the appropriateness of units for  
2 labor organization representation;

3           (2) supervise or conduct elections to determine  
4 whether a labor organization has been selected as an  
5 exclusive representative by a majority of the employ-  
6 ees in an appropriate unit;

7           (3) resolve issues relating to the duty to bar-  
8 gain in good faith;

9           (4) conduct hearings and resolve complaints of  
10 unfair labor practices;

11           (5) resolve exceptions to the awards of arbitra-  
12 tors; and

13           (6) take such other actions as are necessary  
14 and appropriate to effectively administer this Act,  
15 including issuing subpoenas requiring the attendance  
16 and testimony of witnesses and the production of  
17 documentary or other evidence from any place in the  
18 United States, and administering oaths, taking or  
19 ordering the taking of depositions, ordering re-  
20 sponses to written interrogatories, and receiving and  
21 examining witnesses.

22       (c) ENFORCEMENT.—

23           (1) AUTHORITY TO PETITION COURT.—The Au-  
24 thority may petition any United States Court of Ap-  
25 peals with jurisdiction over the parties, or the

1 United States Court of Appeals for the District of  
2 Columbia Circuit, to enforce any final orders under  
3 this section, and for appropriate temporary relief or  
4 a restraining order. Any petition under this section  
5 shall be conducted in accordance with subsections  
6 (c) and (d) of section 7123 of title 5, United States  
7 Code, except that any final order of the Authority  
8 with respect to questions of fact or law shall be  
9 found to be conclusive unless the court determines  
10 that the Authority's decision was arbitrary and ca-  
11 pricious.

12 (2) PRIVATE RIGHT OF ACTION.—Unless the  
13 Authority has filed a petition for enforcement as  
14 provided in paragraph (1), any party has the right  
15 to file suit in a State court of competent jurisdiction  
16 to enforce compliance with the regulations issued by  
17 the Authority pursuant to subsection (b), and to en-  
18 force compliance with any order issued by the Au-  
19 thority pursuant to this section. The right provided  
20 by this subsection to bring a suit to enforce compli-  
21 ance with any order issued by the Authority pursu-  
22 ant to this section shall terminate upon the filing of  
23 a petition seeking the same relief by the Authority.

1 **SEC. 6. STRIKES AND LOCKOUTS PROHIBITED.**

2 A public safety employer, officer, or labor organiza-  
3 tion may not engage in a lockout, sickout, work slowdown,  
4 or strike or engage in any other action that is designed  
5 to compel an employer, officer, or labor organization to  
6 agree to the terms of a proposed contract and that will  
7 measurably disrupt the delivery of emergency services, ex-  
8 cept that it shall not be a violation of this section for an  
9 employer, officer, or labor organization to refuse to pro-  
10 vide services not required by the terms and conditions of  
11 an existing contract.

12 **SEC. 7. EXISTING COLLECTIVE BARGAINING UNITS AND**  
13 **AGREEMENTS.**

14 A certification, recognition, election-held, collective  
15 bargaining agreement or memorandum of understanding  
16 which has been issued, approved, or ratified by any public  
17 employee relations board or commission or by any State  
18 or political subdivision or its agents (management offi-  
19 cials) in effect on the day before the date of enactment  
20 of this Act shall not be invalidated by the enactment of  
21 this Act.

22 **SEC. 8. CONSTRUCTION AND COMPLIANCE.**

23 (a) CONSTRUCTION.—Nothing in this Act shall be  
24 construed—

25 (1) to invalidate or limit the remedies, rights,  
26 and procedures of any law of any State or political

1 subdivision of any State or jurisdiction that provides  
2 collective bargaining rights for public safety officers  
3 that are equal to or greater than the rights provided  
4 under this Act; or

5 (2) to prevent a State from prohibiting bar-  
6 gaining over issues which are traditional and cus-  
7 tomary management functions, except as provided in  
8 section 4(b)(3).

9 (b) COMPLIANCE.—No State shall preempt laws or  
10 ordinances of any of its political subdivisions if such laws  
11 provide collective bargaining rights for public safety offi-  
12 cers that are equal to or greater than the rights provided  
13 under this Act.

14 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

15 There are authorized to be appropriated such sums  
16 as may be necessary to carry out the provisions of this  
17 Act.

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